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09/786,080	02/28/2001	Andreas Flohr	CM1905Q/MH	6376

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/786,080
Filing Date: February 28, 2001
Appellant(s): FLOHR, ANDREAS

Jay A. Krebs
For Appellant

MAILED
NOV 08 2004
GROUP 3700

EXAMINER'S ANSWER

This is in response to the appeal brief filed 24 August 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 24 June 2004 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-17 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,746,729	WADA et al.	05-1998
3,929,135	THOMPSON	12-1975

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 27 April 2004.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al. (5,746,729) in view of Thompson (3,929,135).

Wada discloses all aspects of the claimed invention but remains silent as to the apertures. Wada discloses a nonwoven web 11, as described in column 2, lines 37-39, comprising a first zone 6 and a second zone 7, each having a bonded area comprising bonds 15, as shown in figure 3. The bonded area of the second zone 7 is greater than that of the first zone 6, as shown in figure 1. The first zone 6 has an effective open area of at least 10%, as shown in figure 1. The

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nonwoven web 11 further comprises a plurality of apertures 10, as shown in figure 3.

Thompson discloses a topsheet 22 of an absorbent article, as shown in figure 1. The topsheet 22 comprises a plurality of apertures 26, as shown in figures 2-4, the apertures 26 having an effective size of at least 0.2 mm^2 , as disclosed in column 4, lines 34-36. The topsheet 22 comprising apertures 26 disclosed by Thompson allows rapid flow of fluids while preventing movement of moisture back through the topsheet 22, as disclosed in column 5, lines 18-50.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the topsheet of Wada with the apertures of Thompson, to allow rapid flow of fluids while preventing movement of moisture back through the web.

With respect to claim 2, the first zone 6 comprises a central zone and the second zone 7 comprises an outer zone, as shown in figures 1 and 2.

With respect to claim 3, the web 11 comprises a pair of outer zones 7, as shown in figure 2.

With respect to claim 4, the central zone has an open area of at least 15%, as shown in figure 1.

With respect to claim 5, the central zone has a plurality of apertures 10, as shown in figure 1. Thompson discloses apertures having an effective size of greater than 1.0 mm^2 , as disclosed in column 4, lines 34-36.

With respect to claims 6, 7, and 15, Wada shows the bonded area of the central zone, but remains silent as to the percentage of the central zone being

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bonded. It would have been obvious to one of ordinary skill in the art at the time of invention to make the bonded area of the central zone between 5% and 12%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 8, 9, and 16, Wada shows the bonded area of the outer zones, but remains silent as to the percentage of the outer zones being bonded. It would have been obvious to one of ordinary skill in the art at the time of invention to make the bonded area of the central zone between 15% and 25%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 10, the article 1 comprises a liquid pervious topsheet 2, as shown in figure 2.

With respect to claim 11, the article 1 further comprises a backsheet 3 and absorbent core 4, as shown in figure 2.

With respect to claim 12, Wada discloses a bonded web formed by bonding the web in a first zone, bonding the web in a second zone such that the second zone has a greater bonded area than the first zone, and aperturing the central zone.

With respect to claim 13, the central zone has a open area of at least 10%, as shown in figure 1.

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With respect to claim 14, Thompson discloses apertures having an effective size of greater than 0.2 mm^2 , as disclosed in column 4, lines 34-36.

With respect to claim 17, the web comprises a pair of outer zones, as shown in figure 2.

(11) Response to Argument

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the teaching by Thompson of an optimum size for apertures in the topsheet of an absorbent article is relied upon to modify the apertured topsheet disclosed by Wada. This modification is motivated by the disclosure by Wada in column 2, lines 37-39, that the nonwoven web comprising the liquid pervious topsheet is non-absorbent (i.e. made from thermoplastic synthetic fibers) and therefore relies upon the perforations therein to allow liquid to pass through. Wada further discloses in column 2, lines 39-44, the desire for rapid transfer of liquid through the nonwoven web. Thompson describes in column 5, lines 18-28, that the diameter of the apertures in a topsheet plays a vital role in the rate of transfer of liquid through the topsheet. The optimum diameter

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disclosed by Thompson is at least 0.2 mm^2 , as described in column 4, lines 34-36. The modification of Wada in view of the teaching of Thompson is therefore motivated both by the desire of Wada to improve the rate of fluid transfer and the disclosure of Thompson of conditions that optimize the rate of fluid transfer. The rejections under 35 U.S.C. 103(a) over Wada in view of Thompson is therefore proper.

In response to the Appellant's argument that since Thompson discourages the use of nonwovens and gives preference to films, the suggested combination of Wada and Thompson would not use a nonwoven topsheet, it is noted that Thompson does not teach that any nonwoven is unsuitable for a topsheet, but rather that conventional nonwoven topsheets do not exhibit the improved rate of liquid transfer as his topsheet comprising optimized apertures (see column 7, lines 25-29). The teaching of Thompson relied upon in the rejection under 35 U.S.C. 103(a) is the optimization of the apertures in the topsheet, not the entire topsheet. Therefore modification of the nonwoven web of Wada in view of the teaching of Thompson would result in an apertured topsheet having improved liquid transfer properties. Further, Wada discloses that the nonwoven web may be used in place of a film, as described in column 2, lines 35-39, thus teaching that the film and the nonwoven web are interchangeable for use as a topsheet.

In response to the Appellant's argument that Wada teaches a first zone devoid of a bonded area, it is noted that the first zone of Wada is defined for purposes of examination to comprise the central zone 6 including the bonds 15 around the perimeter of the central zone 6. Thus, Wada discloses a first zone 6

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having a bonded area and a second zone 7 having a bonded area, the bonded area of the second zone 7 being greater than the bonded area of the first zone 6, as shown in figure 1.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



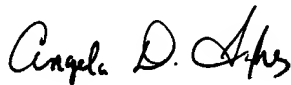
C. Lynne Anderson
October 29, 2004

Conferees



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